

03 NOV 28 A8:06

STATE OF HAWAII

REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

03 NOV 26 P3:10

STATE PROCUREMENT  
STATE OF HAWAII

TO: Chief Procurement Officer

ADMINISTRATION  
STATE DEPARTMENT OFFICE  
HONOLULU, HAWAII

FROM: Attorney General  
(Department/Division Agency)

Pursuant to § 103D-102(b)(5), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

**Description of goods, services, or construction:**

Legal Services in connection with public finance general matters, including advising the State of Hawaii with respect to its rights, duties and obligations in connection with public finance matters in general, and not specific bond issues; requirements of the Internal Revenue Code; exemption from federal taxation of interest on state bonds; and related matters.

**Vendor:**

Curtis L. Christensen, Esq.

**Cost:**

Hourly rate of \$225.00, capped at \$30,000.00, plus out-of-pocket expenses capped at \$2,000.00

**Term of Contract:**

**From:** Upon CPO Approval

**To:** June 30, 2004

**Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:**

Mr. Christensen is a nationally recognized bond counsel. National recognition of bond counsel expertise is important because that recognition means that the individual and his or her firm have the requisite breadth and depth of experience and expertise in the area and have substantial backup and resources to respond to the kinds of questions that the State would have. Mr. Christensen has served as public financial general advice counsel to the State for the last three years, so is well versed in the kinds of issues that arise from time to time, is familiar with how the State operates, and has been very efficient and effective in responding to requests from the State. There are only a few local bond counsel (and only two are nationally recognized), but none of them have ever been engaged by the State to provide advice and counsel on public financial general matters because of the local firms' lack of experience and expertise with State financial matters. Last legislative session, Hawaii Revised Statutes, chapter 103D, the State Procurement Code, was amended, and the amendment seems to require that contractors be registered to do business in Hawaii and have a division or office located in Hawaii that is capable of performing the services required by the contract. While Mr. Christensen's firm could obtain a certificate of good standing from its home state, and could conceivably establish a local office, the local office could not perform the services required by the contract unless it is staffed by someone who is licensed to practice law in Hawaii. This amendment would require Mr. Christensen himself to apply for, take, and pass the Hawaii bar examination and become licensed to practice law in Hawaii. Becoming licensed to practice law in Hawaii is costly and time consuming. Moreover, because the bar exam is given only twice a year, it is impractical to require nationally recognized bond counsel to be licensed in Hawaii. Not only would the local staff have to be licensed to practice law in Hawaii, but they would have to have bond counsel expertise and experience. As stated above, there are only two firms in Hawaii that have some national recognition as bond counsel, but hiring these firms would not be practicable or advantageous to the State because to do so would be tantamount to promoting a monopoly and contrary to the purposes and goals of the State procurement code, that is, to foster broad-based and full and open competition. (Act 8, Special Session Laws of Hawaii 1993).

Because of the specialized nature of bond counsel services and the need to obtain services from nationally recognized bond counsel, and because of Mr. Christensen's past experience, it would not be practicable or advantageous to the State to obtain these services competitively.

**Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:**

Due to the highly specialized nature of the work required, and his past experience of successfully performing such work for the State, the Attorney General, and the Department of Budget and Finance (the using agency), would like to retain Mr. Christensen for this project over the other nationally recognized bond counsel.

**A description of the agency's internal controls and approval requirements for the exemption procurement:**

The contract for legal services will be conducted under the supervision of the Attorney General and subject to his final approval.

**A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:**

Attorney General

**Direct questions to:**

Mark J. Bennett, Attorney General

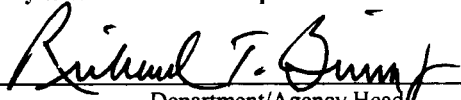
**Phone Number:**

(808) 586-1500

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR:

Yes: ☒ No: ☐

I certify that the information provided above is to the best of my knowledge, true and correct.

  
Department/Agency Head

NOV 26 2003  
Date

**Chief Procurement Officer's Comments:**

Please ensure adherence to applicable administrative requirements.

☒ Approved

☐ Denied

  
Chief Procurement Officer

12/10/03  
Date

cc: Administrator  
State Procurement